SOON PENG YAM (PTE.) LTD. v. GRANT IRENE

[C.A. (Kulasekaram, Sinnathuray & Chua JJ.) January 13, 1984]

[Singapore – Civil Appeal No. 14 of 1983]

Landlord & Tenant – Tenancy for 3 years – Notice to Quit served on tenant – New agreement entered during currency of Notice to Quit – Effect of.

In this case the tenancy agreement of the parties for the premises was for a term of 3 years from November 1, 1977 to October 31, 1980. By a letter dated July 14, 1980 the respondent gave notice to the appellants of her intention to exercise her option under the tenancy agreement to renew the tenancy for a further term of 2 years. On July 16, 1980 the appellants' solicitors replied that the appellants had noted the respondent's request but added that as soon as the second term commenced, the appellants would be serving upon the respondent a notice, under the tenancy agreement, to terminate the renewed tenancy. This they did. On November 1, 1980, the appellants gave the respondent 3 months' notice to quit and deliver up vacant possession of the premises.

It was the case for the appellants, and the learned District Judge so found that on January 28, 1981, before the expiry of the notice to quit, there was an oral agreement made between the appellants and the respondent that from February 1, 1981 the respondent was to be a monthly tenant for a period of 3 months at a rental of $10,000/- per month payable in advance. The respondent, however, quit and delivered up possession of the premises on March 14, 1981. The appellants claimed against the respondent $20,000/- being rental for February and March 1981 and $433.87 being PUB bills payable on behalf of the respondent, less the rental deposit of the sum of $13,500/– and PUB deposit $795/– paid by the respondent. The appellants obtained judgment for the difference for the sum of $6,138.87. The learned District Judge dismissed the respondent's counterclaim for the sum of $8,861.13 being the balance of rental and PUB deposits due to her from the appellants. On appeal to the High Court Abdul Wahab Ghows J. allowed the appeal. He set aside the judgment of the District Judge and gave judgment for the respondent for the sum of $416.13. The appellants and the respondent appealed against that decision.

Held, allowing the appeal: by their conduct the parties had treated the notice to quit as having effectively terminated the renewed tenancy on January 31, 1981. It was on this basis that the parties had entered into a monthly agreement. Therefore the respondent could not be heard to say that the notice to quit only effectively terminated the renewed tenancy on February 10, 1981 and not on January 31, 1981. Therefore, neither party could rely on the notice and the learned Judge should not have given effect to it. The decision of the learned District Judge should therefore be restored with costs granted to the appellants.

COURT OF APPEAL.

Tan Jing Quee for the appellants.

Bala Chandran s/o Kandiah for the respondent.

Cur. Adv. Vult.

Sinnathuray J. (delivering the Judgment of the Court): This appeal arises from a claim by the appellants against the respondent for the sum of $6,138.87 being rentals and PUB charges in respect of the premises, Unit 2301, Shenton House, Shenton Way tenanted by the respondent. The respondent counterclaimed for the sum of $8,861.13 being the balance of rental and PUB deposits due to her from the appellants. At the conclusion of the hearing of the action in the District Court, the learned District Judge gave judgment for the appellants and dismissed the counterclaim of the respondent. On appeal to the High Court, Abdul Wahab Ghows, J. allowed the appeal. He set aside the judgment of the District Court and gave judgment for the respondent in the sum of $416.13. The appellants and the respondent appeal against that decision. The relevant facts are these.

The tenancy agreement of the parties for the premises was for a term of three years from November 1, 1977 to October 31, 1980. By a letter dated July 14, 1980 the respondent gave notice to the appellants of her intention to exercise her option, under Clause 5(ix) of the tenancy agreement, to renew the tenancy of the premises for a further term of two years. On July 16, 1980, the appellants' solicitors replied that the appellants had noted the respondent's request but added that as soon as the second term commenced, the appellants will be serving upon the respondent a notice, under the same Clause 5(ix) of the tenancy agreement, to terminate the renewed tenancy. This they did. On November 1, 1980, the appellants through their solicitors gave the respondent three months' notice to quit and deliver up vacant possession of the premises.

It was the case for the appellants, and the learned District Judge so found that on January 28, 1981, before the expiry of the notice to quit, there was an oral agreement made between the appellants and the respondent that from February 1, 1981 the respondent was to be a monthly tenant for a period of three months at a rental of $10,000 per month payable in advance. The respondent however quit and delivered up possession of the premises on March 14, 1981.

The appellants claimed against the respondent the sum of $20,000 being rental for February and March 1981 and $433.87 being PUB bills payable on behalf of the respondent, less the rental deposit of the sum of $13,500 and PUB deposit of $795

paid by the respondent. The appellants obtained judgment for the difference in the sum of $6,138.87.

At the hearing of the appeal in the High Court, it was assumed that the three months' notice to quit dated November 1, 1980 was served on the respondent on November 11, 1980 and the notice to quit was taken as effective from that date. Therefore, the learned Judge concluded that the respondent could continue to occupy the premises under the tenancy agreement up to February 10, 1981 at the rent of $5,000 per month.

The learned Judge then referred to the evidence that the respondent had sent by post to the appellants' chairman a letter dated February 14, 1981 giving notice of her intention to quit the premises on February 28, 1981 but had only delivered up possession on March 14, 1981. And, on the finding that the respondent had agreed to pay rent at $10,000 per month after the expiration of the renewed tenancy agreement, he ruled that the respondent had to pay rent at $5,000 for the period February 1, 1981 to February 10, 1981 and at $10,000 for the period February 11, 1981 to March 15, 1981. At his request, counsel for both parties calculated the rent payable as aforesaid at $13,878.87. As the respondent had $14,295 with the appellants to meet the rental and PUB bills, the amount due to the respondent from the appellants was $416.13 for which the respondent was given judgment.

Before us, for the appellants, it was contended that the learned Judge had erred in law and in fact in relying on the notice to quit to compute the rents due and payable by the respondent to the appellants. Counsel for the respondent, on the other hand, urged upon us to review the evidence and disturb the finding of fact that there was an agreement between the parties for the rental of the premises at $10,000 per month with effect from February 1, 1981.

Now, the following facts are not in dispute: that after the tenancy agreement ended by efflux-ion of time, from November 1, the respondent occupied the premises under the renewed tenancy at the rental of $5,000 per month; that the renewed tenancy was terminated by a valid notice to quit dated November 1, 1980; and, that the respondent quit and delivered up possession of the premises on March 14, 1981.

The contest is whether there was a fresh agreement made between the parties on January 28, 1981. The learned District Judge considered this issue to be "the crux of the whole matter". In his Grounds of Decision he has carefully considered and analysed the evidence given at the hearing. He refers to the discussion had on January, 28, 1981 when the respondent through her husband who had her authority to negotiate on her behalf accepted a maximum of three months' grace to vacate the premises on payment of $10,000 monthly rental with effect from February 1, 1981. There is confirmation of the oral agreement by the respondent in her letter dated February 2, 1981. More importantly, when the respondent gave evidence she admitted that she had agreed to pay $10,000 per month for a maximum period of three months from February 1, 1981. In our judgment there was ample evidence before the learned District Judge for him to hold as he did that "there was certainly an agreement" to rent the premises to the respondent for three months at the rent of $10,000 per month from February 1, 1981. This finding of fact cannot be disturbed.

The remaining question is what effect, if any, has the notice to quit on the agreement reached between the parties. It appears from the record, that it arose for the first time on appeal. We have already stated how the learned Judge gave effect to the notice to quit. But there is nothing in the Notes of Evidence or in the Judgment on what ground he made that decision and we did not have the benefit of any argument on the point. Our decision is therefore based on general principles of law applicable to the case.

We accept that the notice to quit dated November 1, 1980 served on the respondent on November 11, 1980 would in the normal course of events have effectively terminated the renewed tenancy on February 10, 1981. But in this case the parties had, during the currency of the notice to quit, entered into a new agreement on January, 28, 1981 which had created a new monthly tenancy of the premises with effect from February 1, 1981 at a rent of $10,000 per month. By their conduct the parties had treated the notice to quit as having effectively terminated the renewed tenancy on January, 31 1981. It was on this basis that the parties had entered into a monthly agreement. Therefore, the respondent cannot now be heard to say that the notice to quit only effectively terminated the renewed tenancy on February 10, 1981 and not on January 31, 1981. In our judgment,

neither party can rely on the notice and the learned Judge should not have given effect to it. For these reasons, we allow this appeal and restore the decision of the learned District Judge with costs here and below to the appellants.

Appeal allowed.

Solicitors: *Jing Quee & Chin Joo; Lim & Lim*

THE OFFICIAL ASSIGNEE (of the property of Prabhaker Chandulal Shah) v. COLLECTOR OF LAND REVENUE.

[C.A. (Wee Chong Jin C.J., Kulasekaram & Lai Kew Chai JJ.) January 18, 1984]

[Singapore – Civil Appeal No. 11 of 1982]

Land Acquisition – "Land occupied by H.M. Forces" – Compensation for acquisition for the sum of $211,972 – Land bought for $400,000 – Appeal on behalf of bankrupt purchaser against said compensation – Land Acquisition Act (Cap. 272), ss. 33(1)(a) & 33(5)(e).

In this case the appellant bought the subject property for $400,000.00 in July 1971 and at all material times used it as a store-house for his pepper trade. In January 1975 the property was compulsorily acquired and the Collector of Land Revenue made an award of $87,637.50. Subsequently it was increased to $211,972.00. The Appeals Board (Land Acquisition) confirmed the award of the Collector of Land Revenue. The appellant (who had now become a bankrupt) appealed against the decision of the Appeals Board.

Held, allowing the appeal: (1) the Appeals Board had erred in law in coming to the conclusion that the ascertainment of the market value of the property should be made on the basis of its market price as a piece of land occupied by Her Majesty's Forces. Since 1975 Her Majesty's Forces had ceased to occupy any land in Singapore. Accordingly, this alternative basis for evaluating the market value of such a property under section 33(5)(e) of the Land Acquisition Act was no longer available since its foundation in fact had totally disappeared since 1975;

(2) in these circumstances, the market value of the property as at November 30, 1973, within the meaning of sections 33(1)(a) and 33(5)(e) should be assessed on the basis of its existing use. Seeing that the appellant's purchase had taken place at a time sufficiently proximate to November 30, 1973 the award should have been fixed at $400,000.00.

COURT OF APPEAL.

Lee Han Yang for the appellant.

P. Selvadurai for the respondent.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court): This is an appeal against the order of the Appeals Board (Land Acquisition) which confirmed the Award of the Collector of Land Revenue of $211,972.00 as compensation for the acquisition of the Appellant's property.

The property was used at all material times as a store for pepper. It was a pre-war two-storey building constructed of corrugated asbestos roof on timber frame, brick walls and re-inforced concrete floor. Immediately behind the brick building stood a large single-storey open shed with zinc roof and wall structure. In August 1972 written planning permission was granted under the Planning Act for the retention of the additions and alterations to the existing building for use as a pepper store. The total floor areas of the building and the shed were approximately 1,015 sq metres.

The land on which the building and shed were erected contained an area of 3,305 sq. metres. According to the Town Map of the 1965 Revised Master Plan, which was current, the property was indicated as "Land occupied by H.M. (Her Majesty's) Forces". Although this was the indication in the Town Map, the property was never occupied nor used by the British armed forces since 1939.

It is common ground that in 1975 the British armed forces left Singapore and ceased to occupy any land in Singapore.

On July 22, 1971 the Appellant bought the property at $400,000.00. In January 1975 the property was acquired compulsorily. Although the original Award of the Collector of Land Revenue was made at only $87,637.50, it was later increased to $211,972.00. Despite the increase of the Award, the amount of compensation as affirmed by the Appeals Board is only slightly more than half the price paid by the Appellant who had bought the property on a "willing seller willing buyer" basis for use as a warehouse for pepper.

Before the Appeals Board it was successfully argued on behalf of the Collector of Land Revenue that under section 33(1)(a) read with section 33(5)(e) of the Land Acquisition Act (Cap. 272) (hereinafter referred to as "the Act"), the market value of the property shall be the price which a *bona fide* purchaser might reasonably be expected to pay for the property "in anticipation of the continued use of the land for the purpose designated in the Master Plan." On that basis, the Appeals Board came to the conclusion that the property being designated as "Land occupied by H.M. For-